

REMARKS

Claims 1-9, 11, 14-18, and 46-52, and 55-58 are pending in this application. Applicant requests that independent claim 1 and claim 57 depending therefrom, be amended to address the concerns and the 35 USC § 112 rejection raised by the Examiner. Support for this amendment can be found throughout the specification, for example, page 6, lines 4-10 and Figure 2.

Accordingly, no new matter is presented. Applicant respectfully requests that this Amendment After Final be entered by the Examiner in the interest of expediting prosecution and placing the application in better form for allowance or appeal. Claims 10, 12, 13, 19-45, and 53-54 were previously canceled without prejudice. Applicant reserves the option to further prosecute claims directed to the same or similar subject matter in a separate patent application.

Interview Summary

Applicant acknowledges with appreciation the courtesy extended by the Examiner during the formal interview with Applicant's associate attorney of record on June 8, 2006. In accordance with MPEP § 713.04, Applicant summarizes herewith the details of the interview with the Examiner.

During the interview, the subject matter of the claims were discussed with particular attention directed to independent claim 1. Also discussed was the prior art relied upon in the Non-Final Office Action, in particular U.S. Patent No. 3,955,710 to Commisso. During the interview, the Examiner suggested language for claim 1 to overcome the USC § 112 rejection set forth in the Final Office Action. Accordingly, claim 1 has been amended to incorporate the recommendations provided by the Examiner. Applicant's representative noted that the Commisso reference discloses a vent defined by a continuous cut, as opposed to a single frangible portion as claimed, and thus does not anticipate or render obvious the claims, independently or in combination with the prior art of record. As no new matter is introduced, Applicant respectfully requests that the amendments be entered at this time.

Rejections

35 USC § 112

In the Final Office Action dated April 19, 2006, the Examiner rejected claims 1-9, 11, 14, 46-52, and 55-58 under 35 USC § 112 alleging that the recitation of “the cut consisting of a first interruption” in independent claim 1 constitutes new matter.

Applicant traverses the Examiner's position. Support for the claim language as previously presented is clearly found throughout the specification as originally filed. However, rather than expend further resources directed to this issue, Applicant, in the interest of expediting prosecution and placing the application in better form for allowance or appeal, hereby requests that independent claim 1 and claim 57 depending therefrom be amended to replace any reference to the phrase “interruption” with the term “discontinuity” as used in the specification. Support for this amendment can be found throughout the specification, for example, page 6, lines 4-10 and reference number (30g) in Figure 2. Entry of the these claim amendments is respectfully requested.

These amendments are made solely to expedite prosecution of the present application and do not constitute an acquiescence to any reference identified or objection raised by the Examiner.

35 USC § 103(a)

In the Final Office Action, the Examiner rejected claims 1-9, 11, 14, 16-18, and 45-51 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 3,955,710 to Commisso (hereinafter, “Commisso”). The Examiner further rejected claims 1-9, 11, 14, 16-18, 46-52, and 55-58 under 35 U.S.C. § 103(a) as allegedly being obvious over Commisso in view of U.S. Patent No. 5,076,459 to DeHart (hereinafter, “DeHart”). The Examiner also rejected claim 15 as allegedly being obvious over Commisso and further in view of U.S. Patent No 6,257,434 to Lizzio (hereinafter, “Lizzio”). Applicant respectfully traverses each of these rejections.

Independent claim 1, as amended, is directed to an optional venting container comprising a base and a lid releasably latched to the base, with at least one ventable area formed therein. The ventable area has a perimeter defined by a cut consisting of opposing ends defining a hinge portion and a discontinuity spaced substantially from the hinge to define a single frangible

portion. The ventable area is adapted to form a vent by applying pressure within the perimeter to rupture the single frangible portion. For purposes of illustration and not limitation, Figure 2 of the present application discloses a representative embodiment of an optional venting container (10) including at least one ventable area (30) including perimeter (30a-c) defined by a cut, which consists of opposing ends (30d and 30e) which define hinge portion and a discontinuity (30g) substantially spaced from the first interruption to define a single frangible portion.

The containers of Commisso, Dehart, and Lizzio individually and in combination do not disclose, among other things, an optional venting container having at least one ventable area having a perimeter defined by “a cut consisting of a discontinuity between opposing ends of the cut, the opposing ends defining a hinge portion therebetween, the discontinuity spaced substantially from the hinge to define a single frangible portion.”

Rather, Commisso simply discloses a container having finger apertures. The finger apertures 15 depicted in the figures of Commisso are formed by a continuous radial cut 18 extending from (and in fact beyond) one side of hinge 17 to the other side of hinge 17. Although Commisso does mention that a series of perforations can be used in place of the radial cut (col. 2, lines 16-22), there is no disclosure or suggestion by Commisso of a ventable area having a perimeter defined by “a cut consisting of a discontinuity between opposing ends of the cut, the opposing ends defining a hinge portion therebetween, the discontinuity spaced substantially from the hinge to define a single frangible portion.” As previously noted, the perforations of Commisso do not define a hinge as claimed. Furthermore, the closely spaced perforations of Commisso are not “spaced substantially” from one another, and certainly do not constitute a single frangible portion.

Likewise, neither Dehart nor Lizzio disclose or suggest an optional venting system, let alone a ventable area defined by a discontinuous cut and hinge as claimed. Furthermore, there is no suggestion or motivation provided by the prior art of record to combine the finger openings of Commisso with the containers of Dehart or Lizzio.

Consequently, the prior art of record, individually and in combination, does not disclose or suggest the optional venting container as recited in amended claim 1 of the present application. Independent claim 1, and claims 2-9, 11, 14-18 and 46-52, and 55-58 depending therefrom, are allowable over the prior art of record.

Moreover, dependent claims 2-9, 11, 14-18 and 46-52, and 55-58 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For example, dependent claims 2 and 3 further recite the material of construction of the base and the lid of the container. Dependent claims 4-8 and 14-18, further specify the configuration and shape of the container, as well as the number and locations of the ventable areas. Dependent claims 9, 11, 14 and 56-58 are further directed to the configuration of the ventable area. Claim 46 further recites that the frangible portion is disposed opposite the hinge portion. Dependent claims 47-51 further specify the depth of the cut defined along the perimeter of the ventable area. Dependent claim 52 further recites the location of the ventable areas of the container. Dependent claim 55 further recites that the at least one ventable area is formed in the angled surface of the top wall.

None of the prior art of record, individually or in combination, discloses or suggests an optional venting container have each and every feature as claimed. Thus, at least for these reasons, dependent claims 2-9, 11, 14-18 and 46-52, and 55-58 are further allowable over the prior art relied upon by the Examiner.

Formal Request for Interview

In the event that the Examiner does not find the application to be in condition for allowance, Applicant respectfully requests an interview with the Examiner to discuss the present application and the prior art of record. Applicant's Attorney Daniel Hulseberg may be reached at telephone number (212) 408-2594 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

CONCLUSION

Applicant submits that this Amendment After Final and the accompanying remarks do not raise new issues for consideration or necessitate the undertaking of any additional search of the art by the Examiner because all of the elements and their relationships were either earlier claimed or inherent in the claims as examined. This Amendment After Final should therefore should be entered to allow for immediate action by the Examiner.

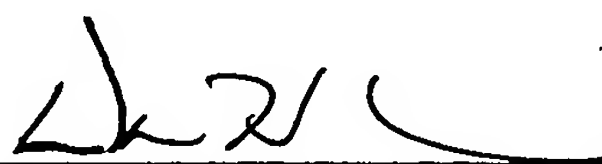
Applicant also submits that entry of this Amendment After Final and the accompanying remarks would place the present application in better form for appeal, should the Examiner dispute the patentability of any of the pending claims.

On the basis of the foregoing Amendments and remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests the previous rejections be withdrawn, and that the pending claims be allowed by the Examiner. Favorable consideration and timely allowance of this application are respectfully requested.

Applicant authorizes the Commissioner to charge any additional fees and/or credit any overpayments associated with this paper to Baker Botts L.L.P. Deposit Account No. 02-4377, Ref. No. 077410.0528. Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, or in the attached Petition, Applicant requests such extension and authorizes the charging of the extension fee to Baker Botts L.L.P. Deposit Account No. 02-4377, Ref. No. 077410.0528.

Respectfully submitted,

Aug 21, 2006
Date


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